

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

COMMONWEALTH OF VIRGINIA

v.

Case No.: CR _____

_____,
Defendant.

Trial Date: _____

AGREED ORDER FOR DISCOVERY

THIS MATTER having come before the Court upon the parties' agreement to enter an Order for Discovery and Reciprocal Discovery pursuant to **VA Rule 3A:11**,

IT IS HEREBY ORDERED AS FOLLOWS:

I. DISCOVERY OBLIGATIONS OF THE COMMONWEALTH:

A. The Commonwealth is HEREBY ORDERED to comply with the following discovery obligations no later than Sixty (60) days after the entry of this Order:

1. To permit the accused to inspect and review any relevant reports prepared by law enforcement officers and made in connection with the particular case, including any written witness statements or written summaries of oral statements contained within such reports, that are known to the Commonwealth's attorney to be in the possession, custody or control of the Commonwealth.

2. To permit the accused to inspect, review, and copy or photograph any relevant:

a. Written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the accused to any law enforcement officer, that are known to the Commonwealth's attorney to be within the possession, custody or control of the Commonwealth;

b. Written or recorded statements or confessions, or the substance of any oral statements or confessions, made by the accused to any person other than a law enforcement officer, that the Commonwealth intends to introduce into evidence against the accused at trial;

c. Written or recorded statements, or the substance of any oral statements, made by a co-defendant or co-conspirator that the Commonwealth intends to introduce into evidence against the accused at trial; and

d. Written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth.

3. To permit the accused to inspect, review, and copy or photograph designated books, papers, documents, tangible objects, recordings, buildings or places, or copies or portions thereof, that are known by the Commonwealth's attorney to be within the possession, custody, or control of the Commonwealth, upon a showing that the items sought may be material to preparation of the accused's defense and that the request is reasonable.

4. To permit the accused to inspect or review the accused's prior criminal record, if any, as is within the possession, custody, or control of the Commonwealth, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the Commonwealth.

B. Special Provisions:

1. **Confidential Informants**: This Order does not authorize the discovery of the names and/or personal identifying information of confidential informants whom the Commonwealth does not intend to call at trial and with regard to whose identity the Commonwealth asserts it holds a privilege. Notwithstanding, the Court may order that the identity of the informant be disclosed upon a showing by the defendant that such disclosure is relevant and helpful to the defense of the accused.

2. **Work Product**: This Order does not authorize the discovery or inspection of the work product of the Commonwealth's Attorney, including internal reports, witness statements, memoranda, correspondence, legal research or other internal documents prepared by the Office of the Commonwealth's Attorney or its agents in anticipation of trial.

3. **Redaction**: With regard to any material or evidence provided by the Commonwealth pursuant to this Order, the Commonwealth may make redactions of personal identifying information as authorized by VA Rule 3A:11(c)(1)(A).

4. **Restricted Dissemination Material**: The Commonwealth may designate evidence or material disclosed pursuant to this Order as "Restricted Dissemination Material" by prominently marking such items as "Restricted Dissemination Material" (hereinafter "RDM") in accordance with VA Rule 3A:11 (c)(2).

a. "RDM" Designation by Defense Agreement: The Commonwealth may designate any evidence or material subject to disclosure pursuant to this Order as "RDM," without supporting certification, if the accused's attorney agrees to the designation.

b. "RDM" Designation by Commonwealth Certification: In the absence of an agreement by the attorney for the accused, the Commonwealth may designate any evidence or material as "RDM" by stamping or otherwise marking it as such and providing a certification in writing, upon information and belief, that: (1) the designated material relates to the statement of a child victim or witness; or (2) disclosure of the designated material may result in danger to the safety or security of a witness or victim, danger of a witness being intimidated or tampered with, or a risk of compromising an ongoing criminal investigation or confidential law enforcement technique.

II. DISCOVERY OBLIGATIONS OF THE DEFENDANT

A. The Defendant is HEREBY ORDERED to provide the following discovery to the Commonwealth's Attorney no later than Sixty (60) days before trial:

1. To permit the Commonwealth to inspect and copy or photograph any written reports of autopsy examinations, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine and breath analyses, and other scientific testing with the accused's possession, custody or control that the defense intends to proffer or introduce into evidence at trial or sentencing.

2. To disclose to the Commonwealth whether the accused intends to introduce evidence to establish an alibi and, if so, disclose to the Commonwealth the place at which the accused claims to have been at the time the alleged offense was committed.

3. To permit the Commonwealth to inspect, copy or photograph any written reports of physical or mental examination of the accused made in connection with the particular case if the accused intends to rely upon the defense of insanity pursuant to Chapter 11 of Title 19.2 of the Code of Virginia; provided that no statement made by the accused in the course of such an examination disclosed pursuant to this Order shall be used by the Commonwealth in its case-in-chief, whether the examination was conducted with or without the consent of the accused.

B. Special Provisions:

1. Defense Objection to Redaction: If the Commonwealth redacts personal identifying information with regard to any material or evidence provided pursuant to this Order and as authorized by VA Rule 3A:11(c), the accused may file a motion seeking disclosure of the redacted information. Should the Court find good cause for disclosure, it may order the Commonwealth to provide the redacted information, or in its discretion, may

order that this redacted information be instead identified as "Restricted Dissemination Material" pursuant to VA Rule 3A:11(c)(2).

2. Restricted Dissemination Material ("RDM"):

a. Responsibilities of Defense Counsel: Except as otherwise provided by Order of this Court, "RDM" provided by the Commonwealth pursuant to this Order, may only be disclosed to the accused's attorney, the agents or employees of the accused's attorney, or to an expert witness. The accused's attorney may orally communicate the content of "RDM" to the accused or allow the accused to view the content of such material but shall not provide the accused with copies of material so designated. "RDM" may not otherwise be reproduced, copied or disseminated in any way. Furthermore, within **Twenty-One (21) days** of the entry of a final order by the trial court, or upon the termination of the representation of the accused, the accused's attorney shall return to the Court all originals and copies of any "RDM" disclosed pursuant to this Order. The Court shall maintain such "RDM" under seal. Any material sealed pursuant to this subsection shall remain available for inspection by counsel of record. For good cause shown, the Court may enter an order allowing additional access to the sealed material as the court in its discretion deems appropriate.

b. Defense Objection to Commonwealth's Designation as "RDM": If the Commonwealth designates evidence or material as "RDM" pursuant to VA Rule 3A:11(c)(2)(B), the accused may at any time file a motion seeking to remove this designation. Should the Court find good cause to remove the designation, it may order that the evidence or material no longer be designated as "RDM."

III. MUTUAL DISCOVERY OBLIGATIONS

A. Expert Opinion Testimony

1. Notice Requirements: If the Commonwealth's Attorney and/or the Defendant intends to introduce expert opinion testimony at trial or sentencing, the party seeking to introduce such expert testimony shall provide, no later than **Sixty (60) days** before the trial date, written notice of such intent to the opposing party and shall provide such opposing party with:

- a. any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and the bases and reasons for those opinions; and
- b. the witness's qualifications and contact information.

2. Exception for Certificates of Analysis: Pursuant to VA Rule 3A:11, providing the opposing party with a copy of a certificate of analysis from the Virginia Department of Forensic Science or any other agency listed in Virginia Code §19.2-187, signed by hand or by electronic means by the person performing the analysis or examination, shall satisfy the requirements of this Order.

3. Exception for Rebuttal Experts: If a party intends to introduce expert opinion testimony at trial or sentencing which is in response to an expert that has been noticed by the opposing party in compliance with this Order, then the party seeking to introduce such rebuttal expert testimony shall provide to the opposing party these written disclosure requirements listed hereinabove no later than **Thirty (30) days** before the trial date.

4. Admissibility: Nothing in this Order shall render inadmissible an expert witness's testimony at the trial or sentencing further explaining the opinions, bases and reasons disclosed pursuant to this Order, or the expert witness's qualifications, just because the further explanatory language was not included in the notice and disclosure provided under this Order. All matters of admissibility shall be within the sound discretion of the court.

B. List of Witnesses:

No later than **Thirty (30) days** before the trial date, each party shall provide the opposing party with a list of the names and, if known to the party seeking to call the person as a witness, the addresses of all persons who are expected to testify on behalf of that party at trial or sentencing. For the Commonwealth, this requirement is subject to any redactions as permitted by VA Rule 3A:11 (c)(1), and for both parties, this requirement is subject to any Protective Order(s) as entered pursuant to VA Rule 3A:11(g).

IV. GENERAL PROVISIONS

1. If after the entry of this Order, the accused at any point thereafter is permitted by this Court to proceed with his/her case *pro se*, the Commonwealth may file a motion with this Court to amend this Order seeking to limit the scope of discovery as the Court deems appropriate.

2. The Commonwealth shall abide by all constitutional and statutory duties of the Commonwealth's Attorney to provide exculpatory and/or impeachment evidence to the accused.

3. A party to this Order may satisfy the requirement to permit the opposing party to inspect and copy or photograph a document, recorded statement or recorded confession by providing an actual duplicate, facsimile or copy of the document.

4. Any material or evidence disclosed or discovered pursuant to this Order and filed with the Clerk of Court shall be placed under seal until it is either admitted as an exhibit at a trial or hearing or the Court enters an order unsealing the specified material or evidence.

5. Upon the motion of either party and for good cause, this Court may enter a Protective Order in accordance with VA Rule 3A:11(g) with regard to the discovery or inspection required by this Order, and in its discretion may order any condition that it deems necessary to the orderly adjudication of the case or to the fair administration of justice.

6. That this Order is continuing in nature as set forth in VA Rule 3A:11(h). Both parties shall exercise due diligence to comply with their respective discovery obligations within the timeframes as proscribed by this Order. However, for good cause shown or upon a material change in circumstances, either party may move the Court to amend or modify the discovery deadlines as initially set forth by this Order. Furthermore, if at any time before or during trial, a party discovers the existence of additional material that is subject to discovery under this Order, but which has not been previously disclosed to the opposing party, that party shall promptly notify the opposing party of the existence of the additional material. If at any time during the pendency of the case it is brought to the attention of the Court that a party has failed to comply with VA Rule 3A:11 or with this Order, the Court shall order such party to permit the discovery or inspection of materials not previously disclosed and may grant such other relief authorized by Virginia law as it may in its discretion deem appropriate.

ENTERED this _____ day of _____, 20 _____.

Circuit Court Judge

We Ask for This:

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